IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 7663 of 2005

Between:

Balaji Godowns, Warangal, rep. by its Managing Partner Sri M. Suryanarayana Rao S/o Ramaiah, 42 Years,. Hanamakonda, Warangal District.

..... PETITIONER

AND

1 Senior Regional Manager, Food Corporation of India, Karimnagar.
2 District Manager, Food Corporation of India, Karimnagar.
3 General Manager, A.P. State Ware Housing Corporation, Warehousing Sadan, Nampally, Hyderabad.

.....RESPONDENTS

WRIT PETITION NO : 12337 of 2005

Between:

1 Dr.Pattabhiramaiah, S/o.Venkaiah, R/o.Balasamudram, Hanumakonda, Warangal district.
2 N.Sunitha, W/o.Late Ramakrishna Rao, R/o.8-1--87/1,Balasamudram, Hanumakonda, Warangal district.
3 Ch.Sujatha, W/o.Chandramouli, R/o.8-1-87/1, Old Beat Bazar, Warangal, Warangal District.

.. PETITIONERS

AND

1 Food Corporation of India, Rep by Seniopr Regional Manager,
Regional Office at Hyderabad.
2 A.P.State Ware Housing Corporation, Rep by its Managing Director, Nampally, Hyderabad.

...RESPONDENTS

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 7663 OF 2005

A N D

W.P.No. 12337 OF 2005

COMMON ORDER:

1. Since the issue involved in these writ petitions is one and the same, they are heard together and are disposed of by this common order.

2. Balaji Godowns, Warangal represented by its Managing Partner M.Suryanarayana Rao is the petitioner in W.P.No. 7663 of 2005. The relief sought for in the writ petition is as follows:

> *"For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue a writ order or direction more in the nature of writ of mandamus directing the 1st respondent to take a decision granting approval to the 2nd respondent to take possession of the godowns of 25,000 M.T.S. capacity constructed by the petitioner at Jammikunta, pursuant to the letters dated 6-1-205 and 4-10-2004 addressed by the respondents 2 and 3 respectively to the 1st respondent by declaring the inaction of the 1st respondent in not taking possession of the godowns of the petitioner despite the godowns being made ready for occupation, is highly arbitrary unreasonable, illegal and violative of Article 14 and 21 of the Constitution of India and to pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case"*

3. Dr. A. Pattabhiramaiah, N. Sunitha and Ch. Sujatha are the petitioners in

W.P.No.12337 of 2005. They assailed the action of Food Corporation of India-1st respondent in not taking possession of the godowns constructed by them on the basis of agreement between them and the A.P. State Warehousing Corporation-2nd respondent.

4. An agreement dated 18-10-2001 came to be executed between the Food Corporation of India and the A.P. State Warehousing Corporation where under the former agreed to give seven years guarantee for using the godowns to be constructed by the latter along with tonnage. The godown so constructed either by the A.P. State Warehousing Corporation or on its behalf would be taken on lease for a compulsory period of seven years by the Food Corporation of India for Warehousing of food grains such as Rice etc., By virtue of the said agreement, the A.P. State Warehousing Corporation issued a notification inviting investors to come forward for construction of godowns at their costs and lease the same to Food Corporation of India for seven years. The A.P. Warehousing Corporation has entered into an agreement with each of the writ petitioners. The petitioners constructed the godowns in accordance with the specification of Food Corporation of India by investing huge money. They completed the construction of godowns in May, 2004 and duly informed the A.P. Warehousing Corporation, so as to take possession of the same. A team of Officers of the Food Corporation of India as well as Andhra Pradesh Warehousing Corporation inspected the godowns and made certain suggestions for taking delivery of the godowns by the Food Corporation of India. The petitioners complied the requirements and informed the A.P. State Warehousing Corporation who in turn informed the Food Corporation of India. The A.P. Warehousing Corporation also informed the Food Corporation of India to take over the godowns since they were constructed as per the requirements and specifications of Food Corporation of India. The Food Corporation of India did not consider taking over the godowns on the ground of inordinate delay in construction of the same. According to the petitioners, the stand of the Food Corporation of India is hit by the principles of promissory estoppel and their (petitioners) legitimate expectations. It is their further stand that the Food Corporation of India as well as A.P. State Warehousing Corporation assured the investors that the godowns constructed according to the specifications of the Food Corporation of India would be taken on lease by the Food Corporation of India for a period of seven years on the prescribed rental rates and the said assurance made the investors to spend

substantial amount in construction of massive godowns which suit the Food Corporation of India alone and for no others. When the Food Corporation of India refused to take possession of the godowns of the petitioners on lease, these writ petitions have been filed invoking the jurisdiction of this Court under article 226 of the Constitution of India with a prayer stated supra.

5. The Food Corporation of India and the A.P. State Warehousing Corporation filed separate counters. It is suffice to refer the counter affidavits filed by respondents in W.P.No.7663 of 2005.

6. The 1st respondent is Senior Divisional Manager, Food Corporation of India, Regional Office, Hyderabad and the 2nd respondent is District Manager, Food Corporation of India, Karimnagar. One Ravinder Adepu has sowrn to counter affidavit filed on behalf of the respondents 1 and 2. The counter affidavit in brief is that the petitioner entered into contract with the A.P.S.W.C. and undertook to complete the construction within a period of four months from the date of agreement i.e. 18-10-2001. But, the petitioner failed to complete the construction of godowns within the stipulated period. APSWC and FCI entered into agreement on 19-9-2001. There is a specific covenant in the agreement that the guarantee (7 years guarantee) shall be applicable to the godowns which are completed in all respects as per the FCI specifications including the weighing bridge and such other infrastructure and fit for operations, and handed over to FCI within a period of four months from the date of agreement in each case. As the writ petitioners committed breach of agreement with APSWC by not completing the constructions within the stipulated period, the respondents Corporation is not under obligation to comply seven years guarantee and there is no privity of contract between the respondents corporation and the petitioner so as to entitled the petitioner to enforce contractual rights. APSWC is not the agent of this respondents Corporation. Respondents Corporation addressed letter on 11-4-2005 to the Managing Director APSWC, Hyderabad stating that the request to take godowns constructed by the APSWC under seven years scheme at Jammikunta with a capacity of 25000 MTS has been examined in consultation of Government of India and Food Corporation of India Head Quarters and decided not to take over the above said godowns constructed by petitioners for the reason of not constructing the godowns within the stipulated period. The writ petition is liable to be dismissed as infructuous. A further plea has been taken in the counter affidavit that the writ is bad for non-joinder of necessary

party i.e. Union of India.

7. One E.Prasad Rao has sworn to the counter affidavit filed on behalf of the 3rd respondent i.e. A.P.State Warehousing Corporation, Hyderabad. The counter affidavit is very brief. The stand of the State Warehousing Corporation is that it has requested the Food Corporation of India to take over the godowns immediately. I deem it appropriate to refer the relevant portion of the counter affidavit of the 3rd respondent and it is thus:

> *"It is submitted that this Corporation has also addressed a letter dated 12-4-2005 to the Senior Regional Manager, F.C.I. Hyderabad, informing that the construction of 25,000 MTS Capacity godowns at Jammikunta were completed on 7-7-2004 under 7 years guarantee scheme of FCI and the Investors have also executed H & T and P & M Agreements on 1-10-2004 vide this office letter dt. 4-10-2004. The Corporation has also requested the 1st respondent to advise the 2nd respondent to take over the godowns immediately. But, so far the above godowns were not yet taken over by the 2nd respondent, even after a lapse of nine months. It is also requested the 1st respondent to look into the matter personally and advise the District Manager, Karimnagar to take over the godowns without further loss of time".*

8. A reply affidavit has been filed by the petitioner in W.P.No. 7663 of 2005. Additional counter affidavit has also been filed on behalf of Food Corporation of India in W.P.No. 12337 of 2005. It is stated in the additional counter affidavit filed on behalf of the Food Corporation of India that the storage capacity of godowns in A.P. Region where percentage of utilization is only 32% as on 31-1-2005 and if the godowns of the petitioners are taken on lease, they remain un-utilized resulting in unnecessary financial burden on FCI. It is also stated that the utilization of existing godowns in Karimnagar is far below to their storgage capacity. Para 3 of the counter affidavit needs to be noted and it is thus:

> *"I submit that in so far as Karimnagar is concerned the percentage of utilization of storage capacity is the same as mentioned in Annexure –II. From this it is clear that the FCI is having owned godowns 2 (63340 MTs), SWC 7 years guarantee godowns 3 (80000 MTs) and CWC 7 year guarantee godowns 2 (33400 Mts) for the years 2001-02 to*

2004-05. Hence, the utilization of the storage capacity in Karimnagar is 104.6%, 43.9% , 23.0% and 20.8% respectively".

9. Heard the learned counsel Sri C. Ramachandraraju, appearing for the writ petitioner in W.P.No.7663 of 2005 and Sri Vedula Venkata Ramana the learned counsel appearing for the petitioners in W.P.No.12337 of 2005. Sri B.Anjaneyulu, learned counsel appearing for Food Corporation of India ((Respondents NO.1 and 2 in W.P.No.7663 of 2005 and 1st respondent in W.P.No.12337 of 2005) and the learned counsel appearing A.P.State Warehousing Corporation (3rd respondent in W.P.No. 7663 of 2005 and 2nd respondent in W.P.No.12337 of 2005).

10. Sri.C.Ramachandra Raju, the learned counsel appearing for the petitioner in W.P.No. 7663 of 2005 submits that the Food Corporation of India having issued seven years guarantee for using godowns to be constructed by A.P. State Warehousing Corporation is not justified in refusing to take possession of the godowns constructed by the petitioner. He also submits the action of the FCI in refusing to take over the godowns is arbitrary and violative of principle of promissory estoppal and prospective expectations of the petitioner. He further submits that the petitioner constructed the godowns under the supervision of A.P. State Warehousing Corporation and the Food Corporation of India and in accordance with the specification prescribed by the Food Corporation of India and therefore, Food Corporation of India is bound to take over the godowns constructed by the petitioner on lease. It is further submitted by the learned counsel that the Food Corporation of India being the instrumental of the State cannot act arbitrary or irrationally and more so when the petitioner constructed godowns by spending huge amounts and the said godowns are useful only to the Food Corporation of India and to no others.

11. Sri.Vedula Venkataramana, the learned counsel appearing for the petitioners in W.P.No.12337 of 2005 submits that the godowns have been constructed under the supervision of the A.P. State Warehousing Corporation and the Food Corporation of India and since the godowns are constructed in accordance with the specification given by the Food Corporation of India, the action of the Food Corporation of India in not taking over the godowns is arbitrary and thus mandamus is required to be issued

to the Food Corporation of India to take possession of the same. He also submits that the Food Corporation of India has not raised any objection upto 29-11-2004 with regard to delay in completing the constructions of the godowns and therefore, the Food Corporation of India is estoped from raising objection of not completing the godowns within the stipulated period. In support of his submissions reliance has been placed on the decision of the Supreme Court in ***ABL International Ltd., Vs. Export Credit Guarantee Corporation of India Limited,*** wherein it has been held that the question whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual liability of the State or its instrumentality by an aggrieved party is no more res integra and settled by large number of judicial pronouncement of the Supreme Court. Para 23 of the judgment needs to be noted and it is thus;

> "*It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly, and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively".*

He also placed reliance on the decision of Supreme Court in ***Mohinder Singh Gill Vs. The chief Election Commissioner, New Delhi*** wherein it has been held;

> "*When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out".*

12. Sri B.Anjaneyulu, the learned counsel appearing for the Food Corporation of

India submits that there is no privity of contract between the petitioners and the Food Corporation of India and therefore, the writ petitions against the Food Corporation of India are not maintainable and they are liable to be dismissed in limini. He also submits the agreement of guarantee given to APSWC is only in respect of the godowns, which were to be completed within four months from the date of agreement in each of the cases prospectively. As the godowns in question were not completed within the time stipulated, no benefit could be claimed either by A.P.S.W.C. or any one on its behalf under the agreement of guarantee dated 19-9-2001. A further submission has been made that extension of time to the petitioners for completion of the godowns is without notice to the Food Corporation of India and in which case, there is no obligation on the part of the Food Corporation of India to take possession of the godowns, which were not completed within four months from the date of agreement of guarantee dated 19-9-2001.

13. It is also contended by him that under the agreements executed between the petitioners on one hand and the A.P.S.W.C. on the other hand contain an arbitration clause and therefore, the writ petitions are not maintainable. Reference has been made to clause 10 in the agreement, which reads as follows:

> *"In the event of any dispute arising between the parties, the same will be referred to Managing Director of the Corporation or any person appointed by the MD and the decision will be final in this regard and binding upon the party".*

14. To buttress his submissions reliance has been placed on the decisions of the Supreme Court in ***National Textile Corporation Vs. Haribox Swalram, in Director of Settlements, A.P. v. M.R.Appa Rao, in Food Corporation of India Vs. Bhanu Lodh in State of U.P. Vs. Bridge and Roof Co. in Bannari Amman Sugars LTd., Vs. Commercial Tax Officer, in Swamy Atmananda Vs. Swami Bodhananda and the decision of our High Court in M/s Roxy Roller Flour Pvt. Ltd. Vs. Govt. of A.P.***

15. In the ***National Textile Corporation Limited case***, it has been held that in order that mandamus be issued to the parties to do something, it must be shown that there is statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

16. In the ***Director of Settlements, A.P. v. M.R.Appa Rao's*** case Supreme Court held:

> *". that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226of the Constitution of India. It is therefore, essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights which may come within the expression for any other purpose. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognized lines and subject to certain self imposed limitations. The expression ' for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, 'Mandamus' means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition".*

17. In ***State of U.P. Vs. Bridge and Roof Co. (India) Limited*** the Supreme Court

held, when the contract is not a statutory contract and it is governed by the provisions of the Contract Act or maybe also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil Court as the case may be.

18. In the ***Food Corporation of India's case*** the Supreme Court held that Section 6(2) is a Provision of the Food Corporation of India Act which empowers the Central Government to issue directives and appoint the Board of Directors of Corporation to comply with said directives.

19. In ***Bannari amman Sugars Ltd.'s*** the Supreme Court held ;

> "In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient o press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be presenting the mind of the Court".

20. In **M/s Roxy Roller Flour Pvt Ltd.** a Division Bench of our High Court held that to constitute a promissory estoppal the following ingredients should be satisfied.

> "1) *One party has to make to the other party in clear and unequivocal terms/ promise or representation.*
>
> *2) The promise should be intended to create legal right or relationship or effect the legal relationship to arise in the future and;*
>
> *3) The party making the promise must have the knowledge or intention that it would be acted upon by other party and in fact the party should have acted on the said promise. It is further held that the doctrine of promissory estoppel cannot be taken recourse of."*

21. It is not in dispute that A.P. State Warehousing Corporation on one hand and the writ petitioners on the other hand entered into agreements. The Food Corporation of India is not a party to the said agreements. Sri C.Ramachandra Raju, the learned counsel appearing for the petitioner in W.P.No. 7663 of 2005 has strenuously contended that though Food Corporation of India is not a party to the agreements, the subsequent conduct of the officials of the Food Corporation of India such as repeated inspections of the godowns while constructions were under progress indicates that the Food Corporation of India is also bound by the terms of the agreement. I have gone through the terms of the agreement dated 18th October, 2001 between the parties. Food Corporation of India is not a party to the agreement which fact is not in serious dispute. The writ petitioners intend to fasten the liability on the Food Corporation of India to take the godowns constructed by them on lease basing on the agreement of guarantee executed by the Food Corporation. Since much emphasis has been laid on the terms of the agreement, I deem it appropriate to extract the agreement of guarantee and it is thus:

> *"1.0. This deed of guarantee made this dayof 19th September, 2001 Between the Food Corporation of India (hereina fter called "FCI) represented by the Senior Regional Manager, FCI, Hyderabad on one part and the Andhra Pradesh State Warehousing Corporation (hereafter called "APSWC") represented by the Managing Director, APSWC, on the other part.*
>
> *2.0. Whereas the FCI has agreed to give 7 (seven) years guarantee for usisng godowns to be constructed by APSWC or to be got constructed at Jammikunta along with the tonnage as decided by SRM, FCI and intimated to the APSWC as 50,000 MTs and has agreed to make such payments of storage charges to APSWC on par with CWc subject to the specifications of godowns and services of storage being equal as per instructions, fro time to time, issued by FCI, Headquarters.*
>
> *3.0. This guarantee shall be applicable to the godowns where construction is completed in all respects as per FCI specifications including weighbridges and other infrastructures and fit for operations handed over to FCI within a period of 4 (four) months or earlier from the date of agreement in each case prospectively".*

22. It is clear from the terms of the agreement that the guarantee was to the APSWC in respect of the godowns which were to be completed in all aspects within four months from 19th September, 2001. At this juncture I may reiterate the prayer of the writ petitions. They prayed for issuance of writ of mandamus against the Food Corporation of India to take possession of the godowns constructed by them at Jammikunta of Karimnagar District. One of the conditions for exercising power under Art.226 of the Constitution for issuance of mandamus is that the court must come to the conclusion that the aggrieved party has a legal right which entitles him to any of the rights and that such rights have been infringed. Admittedly, the petitioners are not parties to the agreement of guarantee executed between APSWC on one hand and FCI on the other hand and likewise FCI is not a party to the agreements executed between the writ petitioners on one hand and APSWC on the other hand. When there is no legal duty on the part of the FCI to take possession of the godowns constructed by the petitioners on lease, no mandamus can be issued to the FCI. Accordingly, I find that the writ petitions are misconceived and are not maintainable against the FCI and the same are liable to be dismissed.

23. In view of the above discussion, both the writ petitions are misconceived and they are hereby dismissed. No order as to costs.

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B.Seshasayana Reddy, J.

9th September, 2005

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 7663 OF 2005

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W.P.No. 12337 OF 2005

COMMON ORDER:

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September, 2005